

**Government Industry Advisory Panel**  
**Tension Point – Lack of Trained Government Personnel**

**Original Title: 6. C. Lack of Trained Personnel**

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**Tension Point:**

Generally, Government program managers (PMs), engineers, contracting officers (COs), requirements and logistics officers - do not possess sufficient knowledge and skills regarding the management of Technical Data and Computer Software Rights. Acquisition professionals do not receive adequate, if any, training in this area, therefore, they may not be able to define government needs for life cycle sustainment when their leverage is most practical – in the early phases of a program. As a result, they request Unlimited or Government Purpose Rights, even when the acquisition program may not require this level of rights in technical data or computer software.

**Issue:**

**Policy -** It is DoD policy (DFARS 227.7103-1) to acquire only the technical data, and the rights to that data, necessary to satisfy agency needs. Solicitations and contracts must (1) Specify the technical data to be delivered under a contract and the delivery schedules for the data; (2) Establish or reference procedures for determining the acceptability of technical data; (3) Establish separate contract line items, to the extent practicable, for the technical data to be delivered and require offerors and contractors to price separately each deliverable data item; and (4) Require offerors to identify, to the extent practicable, technical data to be furnished with restrictions on the Government's rights and require contractors to identify technical data to be delivered with such restrictions prior to delivery.

**Reality -** Anecdotal evidence as well as reports from the Government Accountability Office indicate that DoD has not always developed a viable Intellectual Property strategy for its acquisitions. Furthermore, government requirements for technical data and software may not be precisely defined by acquisition personnel assigned to execute the program. This is due partly to the dynamic, uncertain nature of the defense realm and partly to the acquisition personnel's inability to "predict" the future and determine exactly what technical data will be needed several years into the life cycle. (What exactly will we need five, ten or more years into the future to sustain the program and when exactly will we need it?) In addition to the difficulty of accurately estimating future technical data requirements, acquisition personnel across most "Acquisition" disciplines lack basic training and an in depth understanding of technical data and computer software acquisition. Thus, acquisition personnel opt to acquire as much data and software as they can, in the early phase of the program – prior to contract award - while DoD still has considerable leverage and insight into its investment - even if all the data will not be needed until later in the sustainment phase of the program or at any time in the future.

Despite policies to the contrary, this practice has been encouraged by the hard-learned lessons these personnel have gathered in defense acquisition. What experience has taught them, and again what has been confirmed in GAO reports, is that when DoD personnel do not acquire as much data and software as they can in the early phases of the program, they face major obstacles in obtaining, at a reasonable cost, the data rights necessary to sustain the system.

#### **Summary -**

1. Requirements owners/generators do not, typically, possess sufficient knowledge to accurately assess future government requirements therefore the default position is to request “everything”.
  - a. The dynamic, uncertain realm in which DoD operates complicates this further.
  - b. It is difficult for DoD to assess its future data and software needs in the early phase of the program but the market forces compound the problem if DoD defers the decision for data until the later phases of the program.
  - c. It is not clear whether DOD can acquire data and software in the later phases of the program and, when it does, what a reasonable price would be to pay, particularly when large sums have been expended in development.
2. At times, COs may not negotiate the appropriate data rights into their contracts, or do not address them appropriately because the requiring activity has not requested the data or has not provided sufficient supporting information.
3. Even when COs include data rights requirements in the contract, data requirements may be unclear. They may not be addressed in the CDRLs but even when data rights are adequately addressed, DoD may not receive delivery of the data. DoD should ensure the contract includes the requirement for delivery of the data it needs.

#### **Recommendation:**

To ameliorate the situation, we recommend a two-prong approach to be addressed in legislation **(1) Require/Provide additional training for acquisition personnel and (2) Develop a Cadre of Subject Matter Experts.**

##### **1. Require/Provide mandatory training for acquisition personnel assigned to specific programs**

- a. To raise the awareness level and enhance knowledge, ensure all program managers (PMs), engineers, requirements owners (ROs), contracting officers (COs) and logistics officers receive “Just-in-Time” specialized training on technical data and computer software acquisition, prior to assigning them responsibilities in acquisitions which require technical data and software rights.
- b. Make technical data and software rights one of the “core” subjects required prior to certification of Level III PMs, and COs and Core Plus - Life Cycle Logistics.
- c. Streamline and simplify data and software acquisition practices so they will be easier to implement effectively.

## **2. Develop a cadre of Subject Matter Experts (SMEs)**

- a. The cadre should consist of SMEs from the world of requirements generators - those who understand the requirements and potential future needs, from contracting, logistics and legal.
- b. Similarly to Peer Reviews, the individuals selected for this assignment should be fairly senior individuals, with broad-based knowledge of their particular field. They should possess considerable experience across “Acquisition”, and should have completed training and obtained experience in the management of data rights.
- c. This assignment need not be a full-time duty. Initially, it can be handled as an additional duty in the same manner we handle the DoD Peer Reviews and the Air Force Multifunctional Independent Review Teams (MIRTS).
- d. Although these experts may be assigned to their respective agencies, the tasking to help formulate and review Intellectual Property strategy of major systems and appropriate services acquisitions should come from a centralized location at the Office of the Secretary of Defense, e.g. DPAP. This scheme will enable a smaller cadre of individuals to cover a greater number of programs and will eventually standardize, to the degree possible, the DoD requirements for technical data rights and software for our weapons systems and related services.
- e. This cadre should also be tasked with recommending how data and software acquisition practices should be streamlined and simplified to ease training and implementation burdens.

Neither of these recommendations are a panacea but jointly they could go a long way in improving the present situation.

### **Cross-Reference to Other Points:**

This issue would greatly impact several other “tension points” such as Tension Point 2 – Acquisition Planning and Requirements, Tension Point 3 - Source Selection Concerns, and Tension Point 5 – Implementation Concerns.

### **Attachment: Proposed Legislation**

**SEC. XXXXX MANDATORY REQUIREMENT FOR TRAINING RELATED TO TECHNICAL DATA AND COMPUTER SOFTWARE RIGHTS AND INTELLECTUAL PROPERTY**

(a) MANDATORY TRAINING FOR TECHNICAL DATA AND COMPUTER SOFTWARE RIGHTS - Section xxxx of title XX, United States Code, is amended by adding the following new subsection:

(xx) TECHNICAL DATA AND COMPUTER SOFTWARE RIGHTS AND INTELLECTUAL PROPERTY TRAINING REQUIRED - The Secretary of Defense shall provide mandatory training for members of the Defense Acquisition workforce and employees of the Department of Defense responsible for the acquisition of defense articles and commercial items.

(xx). Such mandatory training shall, at a minimum, provide comprehensive guidance, methodologies and best practices for:

- (1) the subject, the function and the impact of technical data and computer software rights and intellectual property in the acquisition of defense articles and commercial items;
- (2) recognizing the need to address technical data and computer software rights prior to issuance of the requirements documents and prior to the issuance of the Request for Proposals;
- (3) more accurate estimating needs for data rights for the sustainment phase of a program;
- (4) specifically negotiated license rights as an alternative to standard license rights;
- (5) development of Intellectual Property Strategies

**(b) INCORPORATION INTO DEFENSE ACQUISITION WORKFORCE LEVEL III CERTIFICATION**

- (1) Members of the Defense Acquisition Workforce and other employees of the Department of Defense must receive the appropriate training prior to an assignment to an acquisition coded position and before they are certified Level III.
- (2) Department of Defense Office of General Counsel shall consider the feasibility of establishing equivalent training and certification for acquisition and intellectual property attorneys.

**SEC. XXX REQUIREMENT TO ESTABLISH A CADRE OF SUBJECT MATTER EXPERTS REGARDING TECHNICAL DATA AND COMPUTER SOFTWARE RIGHTS AND INTELLECTUAL PROPERTY**

- (a) ESTABLISHMENT OF CADRE OF SMEs IN TECHNICAL DATA AND COMPUTER SOFTWARE RIGHTS - The Secretary of Defense shall establish a cadre of Subject Matter Experts (SMEs) within the Department of Defense who will provide advice and expertise in the planning and estimating of requirements regarding technical data and

computer software rights for defense acquisitions of defense articles and commercial items.

(xx) This cadre will be established within one calendar year from the effective date of this authorization.

(b) REPORT TO CONGRESS

Upon implementation of the above requirement, and no later than a year from the date of this authorization, the Secretary of Defense shall provide a report to Congress notifying them of the establishment of the cadre of SMEs.